

ORDER NO. 1397

UNITED STATES OF AMERICA
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

Before Commissioners:

Ruth Y. Goldway, Chairman;
Nanci E. Langley, Vice Chairman;
Mark Acton;
Tony Hammond; and
Robert G. Taub

Competitive Product Prices
Express Mail & Priority Mail
Express Mail & Priority Mail Contract 9

Docket No. MC2012-29

Competitive Product Prices
Express Mail & Priority Mail Contract 9 (MC2012-29)
Negotiated Service Agreement

Docket No. CP2012-38

ORDER ADDING EXPRESS MAIL
& PRIORITY MAIL CONTRACT 9
TO THE COMPETITIVE PRODUCT LIST

(Issued July 10, 2012)

I. INTRODUCTION

The Postal Service seeks to add a new product identified as Express Mail & Priority Mail Contract 9 to the competitive product list.¹ For the reasons discussed below, the Commission approves the Request.

¹ Request of the United States Postal Service to Add Express Mail & Priority Mail Contract 9 to Competitive Product List and Notice of Filing (Under Seal) of Unredacted Governors' Decision, Contract, and Supporting Data, June 21, 2012 (Request).

II. BACKGROUND

On June 21, 2012, in accordance with 39 U.S.C. § 3642 and 39 CFR 3020.30 *et seq.*, the Postal Service filed the Request, along with supporting documents. In the Request, the Postal Service asserts that Express Mail & Priority Mail Contract 9 is a competitive product, and one that is “not of general applicability” within the meaning of 39 U.S.C. § 3632(b)(3). Request at 1. The Postal Service further asserts that the prices and classification underlying the contract are supported by Governors’ Decision No. 11-6.² Among the supporting documents, the Postal Service included a statement supporting the Request, a certification of compliance with 39 U.S.C. § 3633(a), a copy of Governors’ Decision No. 11-6, and a contract related to the proposed new product. In addition, the Postal Service submitted an application for non-public treatment of materials to maintain redacted portions of the contract, customer-identifying information, and related financial information filed under seal. Request, Attachment F.

On June 25, 2012, the Commission issued an order establishing the two dockets, appointed a Public Representative, and provided interested persons with an opportunity to comment.³

III. COMMENTS

The Public Representative filed comments on July 5, 2012.⁴ No other interested person submitted comments. The Public Representative raises one concern with the contract. She notes that there is the potential for reduced cost coverage, because the financial workpapers do not address a contract term providing a negotiated price for

² Decision of the Governors of the United States Postal Service on Establishment of Domestic Competitive Agreements, Outbound International Competitive Agreements, Inbound International Competitive Agreements, and Other Non-Published Competitive Rates, May 22, 2011 (Governors’ Decision No. 11-6).

³ Order No. 1381, Notice and Order Concerning Addition of Express Mail & Priority Mail Contract 9 to the Competitive Product List, June 25, 2012.

⁴ Public Representative Comments, July 5, 2012 (PR Comments).

Package Intercept Service. PR Comments at 2. She states that the supporting workpapers do not address the expected number of contract pieces that will use the Package Intercept Service, or the unit cost of the service. *Id.* Thus, she is unable to determine the impact this term will have on the contract's cost coverage. *Id.* Because of her concerns, the Public Representative is unsure if the contract will comport with the requirements of 39 CFR 3015.7(c) and 39 U.S.C. § 3633(a), and recommends that the Postal Service "supplement its filing with the volume and unit cost of Package Intercept Service contract pieces." *Id.*

IV. COMMISSION ANALYSIS

The Commission has reviewed the Request, the contract, the financial analysis provided under seal, and the comments filed by the Public Representative.

Statutory requirements. The Commission's statutory responsibilities in this instance entail assigning Express Mail & Priority Mail Contract 9 to either the market dominant product list or to the competitive product list. 39 U.S.C. § 3642. As part of this responsibility, the Commission also reviews the proposal for compliance with the Postal Accountability and Enhancement Act (PAEA) requirements. This includes, for proposed competitive products, a review of the provisions applicable to rates for competitive products. 39 U.S.C. § 3633.

Product list assignment. In determining whether to assign Express Mail & Priority Mail Contract 9 as a product to the market dominant product list or the competitive product list, the Commission must consider whether

the Postal Service exercises sufficient market power that it can effectively set the price of such product substantially above costs, raise prices significantly, decrease quality, or decrease output, without risk of losing a significant level of business to other firms offering similar products.

39 U.S.C. § 3642(b)(1). If so, the product will be categorized as market dominant. The competitive category of products shall consist of all other products.

The Commission is further required to consider the availability and nature of enterprises in the private sector engaged in the delivery of the product, the views of those who use the product and the likely impact on small business concerns. 39 U.S.C. § 3642(b)(3).

The Postal Service asserts that its bargaining position is constrained by the existence of other shippers who can provide similar services, thus precluding it from taking unilateral action to increase prices without the risk of losing volume to private companies. Request, Attachment D at 2. The Postal Service also contends that it may not decrease quality or output without risking the loss of business to competitors that offer similar expedited delivery services. *Id.* It further states that the contract partner supports the addition of the contract to the competitive product list to effectuate the negotiated contractual terms. *Id.* at 3. Finally, the Postal Service states that the market for expedited delivery services is highly competitive and requires a substantial infrastructure to support a national network. It indicates that large carriers serve this market. Accordingly, the Postal Service states that it is unaware of any small business concerns that could offer comparable service for this customer. *Id.*

No commenter opposes the proposed classification of Express Mail & Priority Mail Contract 9 as competitive. Having considered the statutory requirements and the support offered by the Postal Service, the Commission finds that Express Mail & Priority Mail Contract 9 is appropriately classified as a competitive product and should be added to the competitive product list.

Cost considerations. The Postal Service presents a financial analysis showing that Express Mail & Priority Mail Contract 9 results in cost savings while ensuring that the contract covers its attributable costs, does not result in subsidization of competitive products by market dominant products, and increases contribution from competitive products.

The Public Representative observes that the Postal Service financial analysis does not address a provision of the instant contract which provides for a negotiated

price for Package Intercept Service.⁵ Due to this omission, the Public Representative is unable to conclude whether the contract satisfies the requirements of 39 U.S.C. § 3633(a). *Id.*

The Public Representative raises a valid concern. However, having reviewed the financial data supporting the instant contract and given the nature of the shipper's business, the Commission does not anticipate that the shipper's use of Package Intercept Service will cause the instant contract's cost coverage to fall below the minimum level specified in Governors' Decision No. 11-6 or fail to satisfy 39 U.S.C. § 3633(a)(2).

The Commission recognizes that Package Intercept Service is a relatively new service offering. Nonetheless, it is imperative that workpapers filed in support of requests for new competitive products be complete, including, where necessary, Postal Service best cost estimates of the likely effects of implementing the contract. With respect to the instant contract, the Postal Service should closely monitor the use of Package Intercept Service and be prepared to report its effect on the financial performance of the contract.

Based on the data submitted, the Commission finds that Express Mail & Priority Mail Contract 9 should cover its attributable costs (39 U.S.C. § 3633(a)(2)), should not lead to the subsidization of competitive products by market dominant products (39 U.S.C. § 3633(a)(1)), and should have a positive effect on competitive products' contribution to institutional costs (39 U.S.C. § 3633(a)(3)). Thus, an initial review of proposed Express Mail & Priority Mail Contract 9 indicates that it comports with the provisions applicable to rates for competitive products.

Other considerations. The contract is scheduled to become effective on the day the Commission issues all necessary regulatory approval and will expire 3 years from the effective date unless, among other things, either party terminates the agreement

⁵ PR Comments at 2. Package Intercept Service enables the shipper to redirect mailed packages from the intended recipient to be returned to the shipper instead.

upon 30 days' written notice to the other party. Request at 4. If the instant contract is terminated prior to the scheduled expiration date, the Postal Service shall promptly notify the Commission.

Within 30 days after the contract terminates, the Postal Service shall file the annual (contract year) costs, volumes and revenues disaggregated by rate category.

In conclusion, the Commission approves Express Mail & Priority Mail Contract 9 as a new product. The revision to the competitive product list is shown below and is effective upon issuance of this Order.

V. ORDERING PARAGRAPHS

It is ordered:

1. Express Mail & Priority Mail Contract 9 (MC2012-29 and CP2012-38) is added to the competitive product list as a new product under Negotiated Service Agreements, Domestic.
2. The Postal Service shall notify the Commission if the instant contract ends prior to the scheduled expiration date as discussed in this Order.
3. Within 30 days after the contract terminates, the Postal Service shall file the annual (contract year) costs, volumes, and revenues disaggregated by rate category.
4. The Secretary shall arrange for the publication of this Order in the *Federal Register*.

By the Commission.

Shoshana M. Grove
Secretary

CHANGE IN MAIL CLASSIFICATION SCHEDULE
CHANGE IN PRODUCT LIST

The following material represents changes to the product list codified at 39 CFR Appendix to Subpart A of Part 3020—Mail Classification Schedule. These changes are in response to Docket Nos. MC2012-29 and CP2012-38. The underlined text signifies that the text is new, and shall appear in addition to all other Mail Classification Schedule text.

Part B—Competitive Products

2000 Competitive Product List

Negotiated Service Agreements

Domestic

Express Mail & Priority Mail Contract 9 (MC2012-29 and CP2012-38)
